

CALIFORNIA DEPARTMENT OF INSURANCE  
LEGAL DIVISION

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California Insurance Commissioner

**BEFORE THE INSURANCE COMMISSIONER**  
**STATE OF CALIFORNIA, LOS ANGELES**

In the Matter of the Licenses and Licensing  
Rights of

PROGRESSIVE CASUALTY  
INSURANCE COMPANY,

PROGRESSIVE NORTHWESTERN  
INSURANCE COMPANY,

PROGRESSIVE SPECIALTY  
INSURANCE COMPANY, and

PROGRESSIVE WEST INSURANCE  
COMPANY,

Respondents.

File No. UPA 00011939 - AP  
OAH No. L-2002110113

**ORDER TO SHOW CAUSE, STATEMENT  
OF SPECIFIC CHARGES/ACCUSATION,  
NOTICE OF MONETARY PENALTY**

CIC §§ 704(b), 704.7, 790.03-790.05, 790.10,  
880, CCR §§ 2632.13(e) 2, 2695.1 - 2695.17  
CVC § 11515(b), CBPC § 6149.5.

Date: **March 10 & 11, 2003**

Time: **9:00 A.M.**

Place: Office of Administrative Hearings  
320 West Fourth Street Suite 630  
Los Angeles CA 90013

**ORDER TO SHOW CAUSE**

WHEREAS, the Insurance Commissioner of the State of California (hereafter, “the  
Commissioner”) has reason to believe that Respondents PROGRESSIVE CASUALTY  
INSURANCE COMPANY (hereafter “CASUALTY”), PROGRESSIVE NORTHWESTERN  
INSURANCE COMPANY (hereafter, “NORTHWESTERN”), PROGRESSIVE SPECIALTY  
INSURANCE COMPANY (hereafter, “SPECIALTY”), and PROGRESSIVE WEST

1 INSURANCE COMPANY (hereafter, "WEST"), and hereinafter collectively referred to as  
2 "Respondents," have engaged in or are engaging in this State in the unfair methods of  
3 competition or unfair or deceptive acts or practices, and other unlawful acts, as set forth in the  
4 STATEMENT OF CHARGES/ACCUSATION contained herein; and

5 WHEREAS, the Commissioner has reason to believe that a proceeding with respect to the  
6 alleged acts of the Respondents would be in the public interest;

7 NOW, THEREFORE, and pursuant to the provisions of Section 790.05 of the California  
8 Insurance Code, Respondents individually and collectively are ordered to appear before the  
9 Commissioner on **March 10 & 11, 2003** at the Office of Administrative Hearings, 320 West Fourth  
10 Street, Suite 630, Los Angeles, CA 90013 at 9:00 A.M., and show cause, if any cause there be,  
11 why the Commissioner should not issue an Order to Respondents requiring Respondents to Cease  
12 and Desist from engaging in the methods, acts, and practices set forth in the STATEMENT OF  
13 SPECIFIC CHARGES/ACCUSATION contained herein in Paragraphs 5 through 8 inclusive, and  
14 imposing the penalties set forth in Section 790.035 of the Insurance Code and Paragraph 9 herein.

15 **GENERAL STATEMENT**

16 1. From December 29, 1970 to the present Respondent CASUALTY has been the  
17 holder of a Certificate of Authority (Certificate Number 2028-9) issued by the Commissioner to  
18 act in the capacity of a Property and Casualty Insurer. From August 4, 1988 to the present  
19 Respondent NORTHWESTERN has been the holder of a Certificate of Authority (Certificate  
20 Number 3158-3) issued by the Commissioner to act in the capacity of a Property and Casualty  
21 Insurer. From September 21, 1977 to the present Respondent SPECIALTY has been the holder of  
22 a Certificate of Authority (Certificate Number 2255-8) issued by the Commissioner to act in the  
23 capacity of a Property and Casualty Insurer. From October 30, 1972 to the present Respondent  
24 WEST has been the holder of a Certificate of Authority (Certificate Number 2181-6) issued by  
25 the Commissioner to act in the capacity of a Property and Casualty Insurer.

26 2. Under the authority granted pursuant to Part 2, Chapter 1, Article 4, Sections 730,  
27 733, 736 and Article 6.5, Section 790.04 of the California Insurance Code and Title 10, Chapter  
28 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, the Commissioner

1 made an examination of the Respondents' claims practices and procedures in California. The  
2 examination covered Respondents' claims handling practices during the period June 1, 1998  
3 through May 31, 1999. The examination was made to discover, in general, if these and  
4 Respondents' other operating procedures conform with the contractual obligations in the  
5 insurance policy forms, to provisions of the California Insurance Code ("CIC"), the California  
6 Code of Regulations ("CCR"), other insurance related statutes, and case law. The examination  
7 (hereinafter "The Examination") included reviews of:

8 a) The guidelines, procedures, training plans and forms adopted by the  
9 Respondents for use in California, including any documentation maintained by the Respondents  
10 in support of positions or interpretations of fair claims settlement practices;

11 b) the application of such guidelines, procedures and forms, by means of an  
12 examination of claims files and related records; and,

13 c) consumer complaints received by the California Department of Insurance  
14 in the most recent year prior to The Examination.

15 3. The Examination was conducted at Respondents' claims office in San Diego and  
16 Burbank, California during the period August 10, 1999 through September 30, 1999 and  
17 continued offsite through January 28, 2000. The examiners reviewed a total of six hundred fifty-  
18 seven (657) claim files.<sup>1</sup> The review identified one-hundred-twenty (120) claims handling  
19 violations, all under CIC Section 790.03 (h) and the Fair Claims Settlement Practices found in  
20 CCR, Title 10, Chapter 5, Subchapter 7.5, Sections 2695.3 through 2695.8 (adopted pursuant to  
21 CIC Section 790.034). The pattern and frequency of the violations indicate a general business  
22 practice.

23 4. In addition to the Fair Claims Settlement Practices Act violations, the examiners  
24 identified one-hundred-thirty-one (131) violations of other sections of the CIC and CCR, the  
25 California Vehicle Code, and the California Business and Professions Code, including CIC  
26 section 880 for failure to use the correct company name in correspondence; CCR Section  
27 2632.13(e)2 for failure to advise the insured of the person principally at fault and the percentage

28 <sup>1</sup> The Examination report, under Scope of Examination, incorrectly listed the number of files reviewed as 646.

of fault; California Vehicle Code Section 11515(b) for failure to notify the Department of Motor Vehicles that the owner of a total loss salvage vehicle retained possession of the vehicle, or of failure to notify the insured or owner of their responsibility to comply with California Vehicle Code Section 11515(b), and Section 6149.5 of the California Business and Professions Code for failure to provide the claimant with notice that settlement payment was sent to claimant's lawyer or other representative. The pattern and frequency of the violations indicate a general business practice.

### **STATEMENT OF SPECIFIC CHARGES/ACCUSATION**

#### **PROGRESSIVE CASUALTY INSURANCE COMPANY**

5. As a result of the Examination, the Commissioner, in his official capacity, now alleges that Respondent **CASUALTY** has violated provisions of the Fair Claims Settlement Practices Regulations (CCR, Title 10, Chapter 5, Section 2695.1 et seq.), CCR, and CIC, as follows:

a) In 5 instances, CASUALTY'S claim files failed to contain all documents, notes and work papers which pertain to the claim, in violation of CCR 2695.3(a).

b) In 1 instance, CASUALTY failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy, in violation of CCR 2695.4(a).

c) In 1 instance, CASUALTY failed to respond to communications within fifteen calendar days, in violation of CCR 2695.5(b).

d) In 1 instance, CASUALTY failed to begin necessary investigation upon notice of claim, in violation of CCR 2695.5(e) 3.

e) In 2 instances, CASUALTY failed, upon receiving proof of claim, to accept or deny the claim within forty calendar days, in violation of CCR 2695.7(b).

f) In 2 instances, CASUALTY failed to state in writing the factual basis for the denial of a claim, in violation of CCR 2695.7(b) 1.

g) In 3 instances, CASUALTY failed to reference the California Department of Insurance in claim denial letters, in violation of CCR 2695.7(b) 3.

h) In 1 instance, CASUALTY failed to notify claimant of applicable statute of

1 limitations, in violation of CCR 2695.7(f).

2 i) In 3 instances, CASUALTY failed to effectuate prompt, fair, and equitable  
3 settlement of claims, in violation of CCR 2695.7(g).

4 j) In 1 instance, CASUALTY failed to tender payment of claim immediately,  
5 but in no event more than 30 days from acceptance of the claim, in violation of CCR 2695.7(h).

6 k) In 9 instances, CASUALTY failed to provide the *first party* claimant the  
7 written basis for the total loss settlement and/or provide the insured with a list of comparable  
8 valuations and/or failed to pay all fees and taxes, in violation of CCR Section 2695.8(b)(1).

9 l) In 3 instance, CASUALTY failed to document the basis of betterment,  
10 depreciation, or salvage, in violation of CCR 2695.8(k).

11 m) In 2 instances, CASUALTY failed to adhere to reasonable standards for the  
12 prompt investigation and processing of claims arising under insurance policies, in violation of  
13 CIC 790.03(h)3.

14 n) In 24 instances, CASUALTY failed to identify and use its own name on  
15 correspondence, in violation of CIC 880.

16 o) In 7 instances, CASUALTY failed to advise the insured of the person  
17 principally at fault and the percentage of fault, in violation of CCR 2632.13(e) 2.

18 **PROGRESSIVE NORTHWESTERN INSURANCE COMPANY**

19 6. As a result of the Examination, the Commissioner, in his official capacity, now  
20 alleges that Respondent **NORTHWESTERN** has violated provisions of the Fair Claims  
21 Settlement Practices Regulations (CCR, Title 10, Chapter 5, Section 2695.1 et seq.), CCR, CIC,  
22 and other related insurance statutes, as follows:

23 a) In 1 instance, NORTHWESTERN'S claim files failed to contain all  
24 documents, notes and work papers which pertain to the claim, in violation of CCR 2695.3(a).

25 b) In 1 instance, NORTHWESTERN failed to send 30-day status letters, in  
26 violation of CCR 2695.7(c) 1.

27 c) In 1 instance, NORTHWESTERN failed to notify claimant of applicable  
28 statute of limitations, in violation of CCR 2695.7(f).

1 d) In 1 instance, NORTHWESTERN failed to effectuate prompt, fair, and  
2 equitable settlement of claims, in violation of CCR 2695.7(g).

3 e) In 1 instance, NORTHWESTERN failed to tender payment of claim  
4 immediately, but in no event more than 30 days from acceptance of the claim, in violation of  
5 CCR 2695.7(h).

6 f) In 1 instance, NORTHWESTERN failed to provide Claimant with copy of  
7 written estimate upon which the settlement was based, in violation of CCR 2695.8(f).

8 g) In 1 instance, NORTHWESTERN failed to document the basis of  
9 betterment, depreciation, or salvage, in violation of CCR 2695.8(k).

10 h) In 3 instances, NORTHWESTERN failed to adhere to reasonable standards  
11 for the prompt investigation and processing of claims arising under insurance policies, in  
12 violation of CIC 790.03(h)3.

13 i) In 6 instances, NORTHWESTERN failed to identify and use its own name  
14 on correspondence, in violation of CIC 880.

15 j) In 11 instances, NORTHWESTERN failed to advise the insured of the  
16 person principally at fault and the percentage of fault, in violation of CCR 2632.13(e) 2.

17 k) In 4 instances, NORTHWESTERN failed to provide the claimant with  
18 notice that settlement payment was sent to claimant's lawyer or other representative, in violation  
19 of Section 6149.5 of the California Business and Professions Code.

20 **PROGRESSIVE SPECIALTY INSURANCE COMPANY**

21 7. As a result of the Examination, the Commissioner, in his official capacity, now  
22 alleges that Respondent **SPECIALTY** has violated provisions of the Fair Claims Settlement  
23 Practices Regulations (CCR, Title 10, Chapter 5, Section 2695.1 et seq.), CCR, CIC, and other  
24 related insurance statutes, as follows:

25 a) In 4 instances, SPECIALTY'S claim files failed to contain all documents,  
26 notes and work papers which pertain to the claim, in violation of CCR 2695.3(a).

27 b) In 2 instances, SPECIALTY failed to reference the California Department  
28 of Insurance in denial letters, in violation of CCR 2695.7(b) 3.

1 c) In 1 instance, SPECIALTY failed to send 30-day status letters, in violation  
2 of CCR 2695.7(c) 1.

3 d) In 1 instance, SPECIALTY failed to effectuate prompt, fair, and equitable  
4 settlement of claims, in violation of CCR 2695.7(g).

5 e) In 9 instances, SPECIALTY failed to provide the *first party* claimant the  
6 written basis for the total loss settlement and/or provide the insured with a list of comparable  
7 valuations and/or failed to pay all fees and taxes, in violation of CCR Section 2695.8(b)(1).

8 f) In 2 instances, SPECIALTY failed to provide claimant with copy of  
9 written estimate upon which the settlement was based, in violation of CCR 2695.8(f).

10 g) In 1 instance, SPECIALTY failed to document the basis of betterment,  
11 depreciation, or salvage, in violation of CCR 2695.8(k).

12 h) In 1 instance, SPECIALTY failed to adhere to reasonable standards for the  
13 prompt investigation and processing of claims arising under insurance policies, in violation of  
14 CIC 790.03(h)3.

15 i) In 10 instances, SPECIALTY failed to identify and use its own name on  
16 correspondence, in violation of CIC 880.

17 j) In 1 instance, SPECIALTY failed to advise the insured of the person  
18 principally at fault and the percentage of fault, in violation of CCR 2632.13(e) 2.

19 k) In 1 instance, SPECIALTY failed to notify the claimant/owner and the  
20 Department of Motor Vehicles (“DMV”) that claimant/owner had retained possession of a  
21 nonrepairable (salvaged) vehicle, and of the claimant-owner’s responsibility to comply with  
22 DMV filing requirements for the salvaged vehicle, in violation of Section 11515.2(b) of the  
23 California Vehicle Code.

24 **PROGRESSIVE WEST INSURANCE COMPANY**

25 8. As a result of the Examination, the Commissioner, in his official capacity, now  
26 alleges that Respondent **WEST** has violated provisions of the Fair Claims Settlement Practices  
27 Regulations (CCR, Title 10, Chapter 5, Section 2695.1 et seq.), CCR, CIC, and other insurance  
28 ///

related statutes, as follows:

a) In 13 instances, WEST'S claim files failed to contain all documents, notes and work papers which pertain to the claim, in violation of CCR 2695.3(a).

b) In 3 instance, WEST failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy, in violation of CCR 2695.4(a).

c) In 1 instance, WEST failed to begin necessary investigation upon notice of claim, in violation of CCR 2695.5(e) 3.

d) In 2 instances, WEST failed, upon receiving proof of claim, to accept or deny the claim within forty calendar days in violation of CCR 2695.7(b).

e) In 3 instances, WEST failed to state in writing the factual basis for the denial of a claim, in violation of CCR 2695.7(b) 1.

f) In 3 instances, WEST failed to reference the California Department of Insurance in denial letters in violation of CCR 2695.7(b) 3.

g) In 3 instances, WEST failed to send 30-day status letters to claimant, in violation of CCR 2695.7(c)1.

h) In 4 instances, WEST failed to notify claimant of applicable statute of limitations in violation of CCR 2695.7(f).

i) In 6 instances, WEST failed to effectuate prompt, fair, and equitable settlement of claims, in violation of CCR 2695.7(g).

j) In 1 instance, WEST failed to tender payment of claim immediately, but in no event more than 30 days from acceptance of the claim in violation of CCR 2695.7(h).

k) In 24 instances, WEST failed to provide the *first party* claimant the written basis for the total loss settlement and/or provide the insured with a list of comparable valuations and/or failed to pay all fees and taxes, in violation of CCR Section 2695.8(b)(1).

l) In 3 instances, WEST failed to provide claimant with copy of written estimate upon which the settlement was based, in violation of CCR 2695.8(f).

m) In 2 instances, WEST failed to notify the insured of subrogation recovery efforts, in violation of CCR 2695.8(i).



1                   n)       In 4 instance, WEST failed to document the basis of betterment,  
2 depreciation, or salvage, in violation of CCR 2695.8(k).

3                   o)       In 7 instances, WEST failed to adhere to reasonable standards for the  
4 prompt investigation and processing of claims arising under insurance policies, in violation of  
5 CIC 790.03(h)3.

6                   p)       In 26 instances, WEST failed to identify and use own name on  
7 correspondence, in violation of CIC 880.

8                   q)       In 13 instances, WEST failed to advise the insured of the person principally  
9 at fault and the percentage of fault, in violation of CCR 2632.13(e) 2.

10                  r)       In 2 instances, WEST failed to provide the claimant with notice that  
11 settlement payment was sent to claimant's lawyer or other representative, in violation of Section  
12 6149.5 of the California Business and Professions Code.

13                  s)       In 2 instances, WEST failed to notify the claimant/owner and the  
14 Department of Motor Vehicles ("DMV") that claimant/owner had retained possession of a  
15 nonrepairable (salvaged) vehicle, and of the claimant-owner's responsibility to comply with  
16 DMV filing requirements for the salvaged vehicle, in violation of Section 11515.2(b) of the  
17 California Vehicle Code.

18                               **PRAYER AND NOTICE OF MONETARY PENALTY**

19                  9.       WHEREFORE, Petitioner prays for judgment against Respondents, and each of  
20 them, as follows:

21                  a.       An Order to Cease and Desist from engaging in such unfair acts or  
22 practices in violation of CIC Section 790.03 and the regulations promulgated pursuant to CIC  
23 Section 790.10, and other insurance related statutes, as set forth above;

24                  b.       Pursuant to CIC Section 790.035, for willful acts in violation of CIC  
25 Section 790.03 and CCR, Title 10, Chapter 5, Subchapter 7.5, Sections 2695.1 through 2695.17  
26 (adopted pursuant to CIC Section 790.034), as set forth above, a penalty in an amount to be fixed  
27 by the Commissioner not to exceed ten thousand dollars (\$10,000.00) for each act; and for each  
28 unfair or deceptive act or practice not found to be willful, a penalty in an amount to be fixed by

1 the Commissioner not to exceed five thousand dollars (\$5,000.00) for each act;

2 c. For acts in violation of CIC Section 704(b) suspension of Respondents'  
3 certificate of authority for a period not exceeding one year or a fine of fifty-five thousand dollars  
4 (\$55,000) in lieu of suspension pursuant to CIC Section 704.7;

5 d. Full restitution and or reimbursement for acts or omissions in violation of  
6 CCR Section 2695.8(b)(1) and DMV Section 11515.2(b).

7 Dated: November 5, 2002

8 HARRY W. LOW  
9 Insurance Commissioner

10  
11 By \_\_\_\_\_/s/  
12 Ramón Cintrón  
13 Staff Counsel  
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